

EXHIBIT E

Declaration of Larry Johnson, Jr., Director of the Department of Inspections,
Appeals, and Licensing for the State of Iowa

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION**

STATES OF TENNESSEE, ALABAMA,)
ARKANSAS, GEORGIA, IDAHO, INDIANA,)
IOWA, LOUISIANA, MONTANA,)
NEBRASKA, NORTH DAKOTA, OHIO,)
SOUTH CAROLINA, SOUTH DAKOTA, and)
WEST VIRGINIA,)

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND)
HUMAN SERVICES; XAVIER BECERRA, in)
his official capacity as Secretary of Health and)
Human Services; and U.S. DEPARTMENT OF)
HEALTH AND HUMAN SERVICES OFFICE)
OF CIVIL RIGHTS,)

Defendants.

Civil Action No. 25-cv-00025

DECLARATION OF LARRY JOHNSON, JR.

Pursuant to 28 U.S.C. § 1746, I, Larry Johnson, Jr., duly affirm under penalty of perjury as follows:

1. I am over 18 years of age, have personal knowledge of the matters set forth herein, and am competent to make this declaration.

2. I serve as the Director of the Department of Inspections, Appeals, and Licensing (“DIAL”) for the state of Iowa. DIAL is a multifaceted regulatory agency charged with protecting the health, safety, and welfare of Iowans. Iowa Code § 10A.103 (2024).

3. DIAL is responsible for, among other duties, inspecting and licensing or certifying healthcare professionals and entities. In support of this portion of its responsibilities, DIAL’s Professional Licensing Division and the licensing boards under its administrative authority license

health-related professionals and perform licensee investigations, licensee disciplinary proceedings, and provide oversight of professional health programs. DIAL is further responsible for the inspection, certification, and licensing of various healthcare entities in the state of Iowa. In support of this portion of its responsibilities, DIAL's Health & Safety Division routinely inspects healthcare and investigate potential statutory or regulatory violations, including those resulting in patient harm. Healthcare entities regulated by DIAL include adult day services; ambulatory surgical centers; assisted living programs; dialysis facilities ("ERSD"); elder group homes; home health agencies; hospices; hospitals; intermediate care facilities for individuals with intellectual disabilities; intermediate care facilities for persons with mental illness; nursing facilities and skilled nursing facilities; and residential care facilities.

4. Both DIAL's health professions and health facilities inspectors protect Iowans' health and safety in our largely rural state where access to healthcare is critical. Having a limited number of healthcare providers and facilities for our rural populations means the state plays a vital role in making sure Iowans are safe at their most vulnerable.

5. In the DIAL Professional Licensing Division, health professions investigators regularly draft and serve investigative subpoenas requesting patient health records or other materials.

6. Those subpoenas issued by the investigators are frequently served upon entities covered under the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936 (1996) ("HIPPA"), seeking protected health information ("PHI") to investigate potential violations of both practitioners and entities that provide healthcare alike. The investigators are authorized to make such requests under Iowa Code § 10A.402 (2024).

7. In the DIAL Health & Safety Division, inspectors regularly request patient health records as part of their on-site inspection of a facility. The health facilities inspectors are authorized to make such requests under Iowa Code §§ 135B.9(1) (2024), 135C.16(3) (2024), and other pertinent state statutes. DIAL's Health & Safety Division also conducts investigations and makes such requests pursuant to federal authority as the state survey agency acting on behalf of the federal Centers for Medicare and Medicaid Services.

8. I am aware of the Department of Health and Human Services' *HIPAA Privacy Rule to Support Reproductive Health Care Privacy*, 89 Fed. Reg. 32,976 (Apr. 26, 2024) ("Final Rule"), which took effect on June 25, 2024, although compliance with the Final Rule generally was not required until December 23, 2024, *id.* at 32,976.

9. In December 2024, DIAL health professions investigators and health facilities inspectors began receiving requests to execute attestation forms from covered entities in response to their investigative subpoenas. To receive the information the investigators and inspectors seek, they have been required to sign the forms. As of the date of this filing, multiple healthcare entity and professional licensing investigations have been delayed while investigators await clarification on new rules.

10. The new rules requirements are so indeterminate that the University of Iowa, also a state of Iowa entity, has required DIAL investigators and inspectors to execute attestations when seeking information from its health facilities and providers.

11. Upon receipt of the first request to sign this type of an attestation, our team consulted with the Iowa Attorney General's Office about this new requirement. We were informed that the Office had concerns about the legality of the Final Rule and the implications of signing the attestation. Due to those concerns, we were advised not to sign the attestation.

12. On January 29, 2025, however, information being sought by the health facilities division was so exigent, general counsel for DIAL executed the attached attestation and correspondence attached hereto as Exhibit A. That is despite the risk imposed on the investigators due to the indeterminate nature of the Final Rule's potential penalties.

13. The records our Health & Safety Division inspectors are seeking are vital to ensuring DIAL can discharge its statutory duties to conduct investigations relative to the standards and practices of hospitals, health care facilities, ambulatory surgical centers, and other healthcare entities.


14. The records our Professional Licensing Division investigators are seeking are vital to ensuring DIAL can discharge its statutory duties to perform licensee investigations, licensee disciplinary proceedings, and provide oversight of professional health programs.

15. Thus, the Final Rule impedes DIAL'S lawful purpose and the Iowa legislature's mandate to protect the health and safety of Iowans by frustrating our investigative processes.

I declare under penalty of perjury the foregoing is true and correct.

Executed on: 01/31/2025

By:

/s/ 

Larry Johnson, Jr.
Director
Department of Inspections, Appeals, and Licensing

EXHIBIT A

Exhibit to Declaration of Larry Johnson, Jr., Director of the Department
of Inspections, Appeals, and Licensing for the State of Iowa



January 29, 2025

Unity Point Health
Iowa Methodist Medical Center
Via email to: UPH_DSM_ROI@unitypoint.org

To whom it may concern,

The Iowa Department of Inspections, Appeals, and Licensing ("DIAL") has a pending investigation initiated under its authority pursuant to Iowa Code chapter 135B and as the state survey agency for the federal Centers for Medicare and Medicaid Services. DIAL is aware of the federal Department of Health and Human Services' HIPAA Privacy Rule to Support Reproductive Health Care Privacy, 89 Fed. Reg. 32,976 (Apr. 26, 2024) (the "Final Rule"), which took effect on June 25, 2024, and under which compliance was generally required by December 23, 2024.

In the interest of expediency in obtaining records necessary to the aforementioned investigation, I have executed the attached attestation in my role as general counsel to DIAL. Please be advised that the execution of this attestation on behalf of DIAL does not indicate that the State of Iowa or DIAL concede that the Final Rule or this covered entity's attempt at implementation of the Final Rule is lawful. The State of Iowa and DIAL reserve all legal rights to challenge the Final Rule and implementation thereof.

Additionally, please consider this correspondence a litigation hold request. Please preserve all compliance policies, in their interim or final version, and any communications you have had with the federal Department of Health and Human Services related to implementation of the Final Rule.

If you have further questions regarding this correspondence, please contact Lindsey Browning, Administrative Law Section Chief of the Iowa Attorney General's Office, at lindsey.browning@ag.iowa.gov or contact me using the information provided below.

Sincerely,

Ashleigh
Hackel

Digitally signed by Ashleigh
Hackel
Date: 2025.01.29 12:02:27
-06'00'

Ashleigh Hackel, General Counsel
Administration Division, Legal & Policy Bureau
(515) 250-3746, Ashleigh.Hackel@dia.iowa.gov



Auth to Release PHI



UnityPoint Health

Model Attestation Regarding a Requested Use or Disclosure of Protected Health
Information Potentially Related to Reproductive Health Care

The entire form must be completed for the attestation to be valid.

Name of person(s) or specific identification of the class of persons to receive the requested PHI. e.g., name of investigator and/or agency making the request
Iowa Department of Inspections, Appeals, and Licensing, Health & Safety Division
Name or other specific identification of the person or class of persons from whom you are requesting the use or disclosure. e.g., name of covered entity or business associate that maintains the PHI and/or name of their workforce member who handles requests for PHI
Iowa Methodist Medical Center
Description of specific PHI requested, including name(s) of individual(s), if practicable, or a description of the class of individuals, whose protected health information you are requesting. e.g., visit summary for [name of individual] on [date]; list of individuals who obtained [name of prescription medication] between [date range]
See "Iowa Methodist Medical Center—Records Request Addendum (1/29/25)" attached hereto.

I attest that the use or disclosure of PHI that I am requesting is not for a purpose prohibited by the HIPAA Privacy Rule at 45 CFR 164.502(a)(5)(iii) because of one of the following (check one box):

- ☒ The purpose of the use or disclosure of protected health information is **not** to investigate or impose liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care or to identify any person for such purposes.
- ☐ The purpose of the use or disclosure of protected health information **is** to investigate or impose liability on any person for the mere act of seeking, obtaining, providing, or facilitating reproductive health care, or to identify any person for such purposes, but the reproductive health care at issue was **not lawful** under the circumstances in which it was provided.

I understand that I may be subject to criminal penalties pursuant to 42 U.S.C. 1320d-6 if I knowingly and in violation of HIPAA obtain individually identifiable health information relating to an individual or disclose individually identifiable health information to another person.

Ashleigh Hackel

Digitally signed by Ashleigh Hackel
Date: 2025.01.29 11:06:08 -06'00'

January 29, 2025

Signature of the person requesting the PHI

Date

If you have signed as a representative of the person requesting PHI, provide a description of your authority to act for that person. Executed in capacity as general counsel for the Iowa Department of Inspections, Appeals, and Licensing

This attestation document may be provided in electronic format, and electronically signed by the person requesting protected health information when the electronic signature is valid under applicable Federal and state law.

REPRODUCTIVE
HEALTH RULE
ATTESTATION

Page 1 of 1

UP MR 063 (REV. 12/24)

Case 3:25-cv-00025-KAC-JEM

Document 26-5
PageID #: 363

Filed 02/07/25

Page 8 of 9

Iowa Methodist Medical Center—Records Request Addendum (1/29/25)

Description of Records Requested: Complete medical record for Jeffrey Tracy, DOB 3/3/74, from January 1, 2025 to discharge.